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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,447	04/28/2000	Steve A. DeLuca	MFCP.70155	3196

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EXAMINER

WINTERS, MAREISHA N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 05/15/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,447

Applicant(s)

DELUCA, STEVE A.

Examiner

Mareisha N. Winters

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13, 15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 13, 15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on March 26, 2003.
2. Claims 8-10 and 15 have been amended. Claims 11, 14, and 16 have been canceled. Claim 19 has been added.
3. Claims 1-10, 12, 13, 15, and 17-19 are pending.

Claim Objections

4. Claims 12 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for being dependent on a canceled base claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 12 is dependent on canceled base claim 11; the examiner suggests that claim 12 depend on claim 10. Furthermore, claim 17 is dependent on canceled base claim 16; the examiner suggests that claim 17 depend on claim 15. It has been further treated on the merits under the suggested dependent form.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim recites the limitation "the averaged data" in line 6; this limitation is vague and ambiguous. In order to clarify the claim language should "the averaged data" read --the averaged *client* data--?

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7. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. Since the *metes and bounds of the claims cannot be determined*, the claims will not be examined any further. See *Ex parte Fressola*, 27 USPQ2d 1608 (Bd. Pat. App. & Inter. 1993). Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-4, 7-10, 12, 13, 15, and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,453,346 to Garg et al. (hereinafter “Garg et al.”).

In reference to claim 1, Garg et al. discloses a method of collecting capacity planning data at a central collection location, said method comprising:

collecting client management data (column 4, lines 22-31);

storing the client management data in a cache for a selected time interval (column 3, lines 14-18); and

averaging the client management data over the selected time interval (column 3, lines 18-21 and column 5, lines 5-6).

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transmitting the averaged data to the central collection location (column 5, lines 14-15;

Note that the averaged data comes from the reduction module and the storage is the central collection location.).

In reference to claim 2, Garg et al. discloses wherein the client management data is collected at the client machine (column 4, lines 18-19; Note that the network monitor being incorporated into another network device (i.e. client machine) is the same as having the data collected at the client machine.).

In reference to claim 3, Garg et al. discloses wherein said collecting step includes collecting client management data for a plurality of clients (column 3, lines 52-55).

In reference to claim 4, Garg et al. discloses wherein the client management data is collected at a first time interval (column 3, lines 14-18).

In reference to claim 7, Garg et al. discloses wherein the client management data is stored in one or more allocated portions of memory (column 3, lines 14-18).

In reference to claim 10, Garg et al. discloses one or more computer-readable media having computer-executable components (column 12, lines 60-64) comprising:

a client collection component for collecting client management data (column 4, lines 22-31);

a client caching component for storing the client management data for a selected time interval (column 3, lines 14-18);

an averaging component for averaging the client management data over the selected time interval (column 3, lines 18-21 and column 5, lines 5-6); and

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a transmission component for transmitting the averaged client management data to a central collection location (column 5, lines 14-15; Note that the averaged data comes from the reduction module and the storage is the central collection location.).

In reference to claim 12, Garg et al. discloses wherein the transmission component transmits raw client management data upon occurrence of an event (column 6, lines 38-41).

In reference to claim 13, Garg et al. discloses wherein the event is exceeding of one or more performance thresholds (column 6, lines 38-41).

In reference to claim 15, Garg et al. discloses one or more computer-readable media having computer-executable modules (column 12, lines 60-64) comprising:

means for collecting client management data (column 4, lines 22-31);

means for storing the client management data for a selected time interval (column 3, lines 14-18);

means for averaging the client management data over the selected time interval (column 3, lines 18-21 and column 5, lines 5-6); and

means for transmitting the averaged client management data to a central location (column 5, lines 14-15; Note that the averaged data comes from the reduction module and the storage is the central collection location.).

In reference to claim 17, Garg et al. discloses wherein the transmission means transmits raw client data upon occurrence of an event (column 6, lines 38-41).

In reference to claim 18, Garg et al. discloses wherein the event is exceeding of one or more performance thresholds (column 6, lines 38-41).

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In reference to claim 19, Garg et al. discloses one or more computer-readable media having stored thereon a data structure (column 12, lines 60-64) comprising a data field containing capacity planning data which represents averaged performance data collected over a period of time (column 3, lines 18-21 and column 5, lines 5-6), wherein the performance monitoring data is converted into capacity planning data before the data structure is transmitted to a central location for capacity planning purposes (column 5, lines 14-15; Note that the averaged data comes from the reduction module and the storage is the central collection location.).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garg et al.

Although the system disclosed by Garg et al. shows substantial features of the claimed invention, as discussed above, it fails to disclose the following limitations.

In considering claim 5, Garg et al. fails to disclose that the selected time interval is at least twice as long as the first time interval. Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Garg et al. A person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Garg et al. by employing the conventional feature of making the selected time interval

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twice as long as the first time interval in order to obtain a larger sampling of data in order to compute more accurate statistical results.

In considering claim 6, Garg et al. further fails to disclose that the client management data is stored in one or more tables in the cache. Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Garg et al. A person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Garg et al. by employing the conventional feature of storing data in one or more tables in the cache in order to categorize instances of similar data for more efficient statistical analysis.

Response to Arguments

12. Applicant's arguments with respect to claims 1-10, 12, 13, 15 and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,327,620 to Tams et al.

U.S. Patent No. 6,327,677 to Garg et al.

U.S. Patent No. 6,434,613 to Bertram et al.

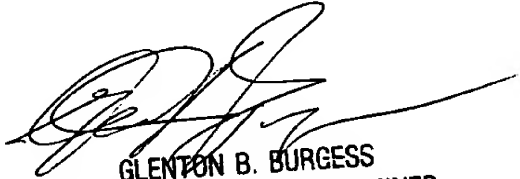
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mareisha N. Winters whose telephone number is (703) 305-7838. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for official communications, (703) 746-7240 for non-official communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Mareisha N. Winters *mnw*
Patent Examiner
Art Unit 2153
May 8, 2003


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